

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 MARY LOU COPPINGER, *et al.*,

10 Plaintiffs,

11 v.

12 ALLSTATE INSURANCE COMPANY,

13 Defendant.  
14

CASE NO. C17-1756-JCC

ORDER

15 This matter comes before the Court on Defendant's renewed motion for partial dismissal  
16 (Dkt. No. 14). Having thoroughly considered the parties' briefing and the relevant record, the  
17 Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons  
18 explained herein.

19 **I. BACKGROUND**

20 Plaintiff Mary Lou Coppinger held an Underinsured Motorist ("UIM") policy through  
21 Defendant Allstate at the time she was involved in a car accident. (Dkt. No. 1-1 at 2.) Following  
22 the accident, Defendant denied payment of her UIM coverage on the basis that the third-party's  
23 liability coverage was adequate to cover her medical bills. Plaintiffs asserted statutory claims for  
24 violations of the Insurance Fair Conduct Act ("IFCA") and Washington's Consumer Protection  
25 Act ("CPA"), and common law claims for breach of contract, bad faith, and unfair practices.  
26 (Dkt. No. 1-1 at 14–17.) The Court dismissed Plaintiffs' IFCA and bad faith claims with

1 prejudice and her CPA claim without prejudice and with leave to amend. (Dkt. No. 11 at 6.)  
2 Plaintiffs filed an amended complaint, and Defendant again moves to dismiss the CPA claim,  
3 alleging that the amended complaint fails to cure the original complaint's factual deficiencies.  
4 (Dkt. Nos. 12, 14.) The Court refers to its prior order for a recitation of other relevant facts in  
5 this case. (*See* Dkt. No. 11.)

## 6 **II. DISCUSSION**

### 7 **A. Legal Standard for Motion to Dismiss**

8 A defendant may move to dismiss when a plaintiff "fails to state a claim upon which  
9 relief can be granted." Fed. R. Civ. P. 12(b)(6). To grant a motion to dismiss under Rule  
10 12(b)(6), the Court must be able to conclude that the moving party is entitled to judgment as a  
11 matter of law, even after accepting all factual allegations in the complaint as true and construing  
12 them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925  
13 (9th Cir. 2009). To survive a motion to dismiss, a plaintiff must cite facts supporting a  
14 "plausible" cause of action. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). A  
15 claim has "facial plausibility" when the party seeking relief "pleads factual content that allows  
16 the Court to draw the reasonable inference that the defendant is liable for the misconduct  
17 alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (internal quotations omitted). Although the  
18 Court must accept as true a complaint's well-pleaded facts, conclusory "allegations of law and  
19 unwarranted inferences will not defeat an otherwise proper motion to dismiss." *Vasquez v. L.A.*  
20 *County*, 487 F.3d 1246, 1249 (9th Cir. 2007) (internal quotations omitted).

### 21 **B. Cognizable Injury for CPA Claim**

22 As the Court previously stated in dismissing Plaintiffs' original complaint, to bring a  
23 CPA claim, a plaintiff must assert "injury to business or property." (Dkt. No. 11 at 4) (citing  
24 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986)).  
25 Damages resulting from a personal injury do not form a basis for relief under the CPA. *See*  
26 *Ambach v. French*, 216 P.3d 405, 409 (Wash. 2009) (upholding summary judgment against a

1 plaintiff bringing a CPA claim based on medical expenses); *Ledcor Industries (USA), Inc. v.*  
2 *Mut. of Enumclaw Ins. Co.*, 206 P.3d 1255, 1262 (Wash. App. 2009) (similar result for emotional  
3 distress). Furthermore, non-business and non-property damages that derive indirectly from  
4 personal injury do not qualify for relief under the CPA. *Sadler v. State Farm Mut. Auto. Ins. Co.*,  
5 C07-0995-TSZ, slip op. at 9 (W.D. Wash. Sept. 22, 2016), *aff'd*, 351 F. App'x 234 (9th Cir.  
6 2009). Plaintiffs' amended complaint must therefore allege an injury to business or property to  
7 survive Defendant's motion to dismiss.

8 Plaintiffs added five allegations to their amended complaint to cure the original  
9 complaint's factual deficiencies. (See Dkt. No. 12 at ¶¶ 3.53-54, 5.1, 5.6-7.) The following is an  
10 illustrative example: "Defendant Allstate's violations of the Washington Administrative Code  
11 and other unreasonable actions, as alleged herein, harmed plaintiff Coppinger and constitute per  
12 se violations of RCW 19.86." (Dkt. No. 12 at ¶ 5.6.) This is a conclusory statement that fails to  
13 present the Court with a sufficient factual basis to conclude that relief may be warranted under  
14 the CPA. At most, Plaintiffs' allegations present the type of bare legal conclusions rejected by  
15 the Supreme Court. *See Iqbal*, 556 U.S. at 679 (2009).

16 Plaintiffs point the Court to references to money damages in their amended complaint.  
17 Notably a "loss of use of money" and a "loss of benefits" (Dkt. No. 12 at 14, 17), alleging that  
18 the Court can reasonably infer this resulted in loss of earned interest and investment  
19 opportunities, potentially recoverable under the CPA. (See generally Dkt. No. 16 at 6) (citing  
20 *Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1311 (W.D. Wash. 2013)). But Plaintiff's  
21 original complaint contained the same factual allegations, which the Court found insufficient to  
22 avoid dismissal. (Dkt. No. 11 at 4.) Re-alleging these damages cannot cure Plaintiffs' factual  
23 deficiencies. *See Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993) (applying the "law of the  
24 case" doctrine).

25 As the Court previously held, to state a cognizable CPA claim based on an insurer's non-  
26 payment of medical expenses, the complaint must assert that the insured "received an insurance

1 policy not conforming with [her] expectations.” (Dkt. No. 11 at 4); *Sadler*, slip op. at 9. The  
2 Court granted Plaintiffs narrow leave to address this issue in their amended complaint. (Dkt. No.  
3 11 at 6.) Plaintiffs have failed to do so.

#### 4 **C. Impact of Statute of Limitations**

5 Defendant reasserts that Plaintiffs’ CPA claim is time-barred under the CPA’s four-year  
6 statute of limitations. (Dkt. No. 14 at 3); *see O’Neill v. Farmers Ins. Co.*, 125 P.3d 134, 140  
7 (Wash. Ct. App. 2004). A CPA cause of action “accrues and the statute of limitations begins to  
8 run when a party has the right to apply to a court for relief.” *Shepard v. Holmes*, 345 P.3d 786,  
9 790 (Wash. 2014) (internal quotations omitted). The Court previously granted Plaintiffs leave to  
10 amend, with narrow instructions to address the requirements to apply the doctrine of equitable  
11 tolling. (Dkt. No. 11 at 5.) Plaintiffs’ amended complaint on this issue suffers from the same  
12 infirmity as the issue of a cognizable injury under the CPA. Plaintiffs amended complaint  
13 contains no allegations to support equitable tolling. (*See generally* Dkt. No. 12.)

#### 14 **D. Leave to Amend**

15 Although the Court is instructed to “freely give leave [to amend] when justice so  
16 requires,” Fed. R. Civ. P. 15(a)(2), it “may in its discretion deny leave to amend due to . . .  
17 repeated failure to cure deficiencies by amendments previously allowed . . . and futility of  
18 amendment.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009). The  
19 Court will provide Plaintiffs an additional opportunity to cure the complaint’s factual  
20 deficiencies, as described above, but absent a compelling reason otherwise, this will be  
21 Plaintiffs’ last opportunity to assert their CPA claim.

### 22 **III. CONCLUSION**

23 For the foregoing reasons, Defendant’s renewed motion for partial dismissal (Dkt. No.  
24 14) is GRANTED without prejudice. The Court GRANTS Plaintiffs leave to amend their  
25 complaint, but only as necessary to cure the deficiencies in its CPA claim, as described in this  
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1 order and the Court's previous order (Dkt. No. 11). The Amended complaint must be filed within  
2 twenty-one (21) days of this order.

3 DATED this 1st day of March 2018.

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7 John C. Coughenour  
8 UNITED STATES DISTRICT JUDGE  
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